

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FRED TUCKER, Individually and as  
Trustee, etc.,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant and Respondent.

B283319

(Los Angeles County  
Super. Ct. No. YC070507)

APPEAL from an order of the Superior Court of Los Angeles  
County, Stuart M. Rice, Judge. Affirmed.

Fred Tucker, in pro. per., for Plaintiff and Appellant.

Bryan Cave Leighton Paisner, Glenn Plattner, and Joseph J.  
Poppen, for Defendant and Respondent.

---

## **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant Fred Tucker (Tucker), individually and as the purported trustee of the Zula Tucker Living Trust, sued respondent JPMorgan Chase Bank (Chase) regarding a loan that his mother, Zula Tucker,<sup>1</sup> who is deceased, obtained from Washington Mutual (WaMu) on March 4, 2008. Tucker filed his initial verified complaint against Chase in April 2015. Chase demurred thereto, and Tucker filed a first amended complaint. Chase again demurred, and the court sustained the demurrer with leave to amend. Tucker filed a second amended complaint, alleging four causes of action: financial elder abuse under Welfare & Institutions Code section 15610.30, breach of the implied warranty of good faith and fair dealing, fraud, and accounting.

The second amended complaint alleged WaMu employees misled Zula into believing the March 4, 2008 loan was a refinancing of her home, when in fact it was a home equity line of credit. Specifically, Tucker alleged that WaMu employees “did not explain to Zula the type of loan, terms of the loan, conditions of the loan and/or interest rate of the loan knowing that Zula was legally blind and could not read, and when [she] ask[ed] question [sic], Zula was told not to worry they did this all the time.” Tucker alleged that “the standard in the mortgage industry” is to “have . . . someone read each document to the disabled blind person before they signed the document.”

Tucker alleged that, in August 2012, a notice of default was recorded against Zula’s property, which was then “rescind[ed], cancel[ed], and withdraw[n]” four months later, in Decembers 2012. Tucker does not allege that there were any further foreclosure

---

<sup>1</sup> For the sake of clarity, we refer to Zula Tucker by her first name. No disrespect is intended.

proceedings, or that he, Zula, or the purported trust made any further payments on the loan in or after December 2012.

Chase demurred to Tucker's second amended complaint. After receiving briefing and conducting a hearing, the court sustained the demurrer, this time without leave to amend. The court identified several independent reasons why Tucker's claims were legally insufficient. First, the court concluded the claims were time-barred, based on Tucker's allegation in his initial verified complaint that he "was made aware that the loan was . . . a home equity line of credit" on March 12, 2008, seven years before he filed suit on claims subject to, at most, four-year statutes of limitation.<sup>2</sup> Second, the court concluded that Chase could not be held liable for the actions of WaMu employees, as the agreement through which Chase took on WaMu's loan commitments also expressly stated Chase did not assume any liability for claims by WaMu borrowers. Third, the court concluded Tucker lacked standing because neither he, nor the purported trust, were parties to the March 4, 2008 loan contract.

Fourth and finally, the court addressed each cause of action individually, concluding that each failed to allege sufficient facts to support a legally cognizable claim for relief. Specifically, the court found: (1) Tucker had failed to allege facts sufficient to support the requisite "taking" or "wrongful use or intent" elements of his financial elder abuse claim; (2) Tucker's implied warranty claim was not legally cognizable, because it did not seek to enforce

---

<sup>2</sup> Tucker's first and second amended complaints allege that Tucker discovered the nature of the loan on March 4, 2012—four years later than what he initially alleged and verified as true. Neither his appellate briefing, nor anything filed below, explains or even comments on this change. In light of this unexplained "blatant[ ] contradict[ion]," the court disregarded the allegations of a later discovery date as sham allegations.

any of the terms of the loan contract, and the implied warranty of good faith and fair dealing “does not impose any duties outside those of the agreement”; (3) Tucker failed to plead fraud with the requisite specificity, for example, by failing to identify the misrepresentation or plead facts suggesting reliance thereon; and (4) Tucker did not allege that “a balance is owed to plaintiff by defendant,” which is necessary to support an equitable accounting claim.

The court entered a judgment of dismissal on March 14, 2017, and Tucker timely appealed. On appeal, Tucker challenges only the first three bases for the court’s decision to sustain the demurrer, and does not question the court’s conclusions regarding the insufficiency of his allegations to support any of his causes of action.

## DISCUSSION

We review an order sustaining a demurrer de novo. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 985–986.) In so doing, we assume the truth of all facts properly pleaded in the complaint or reasonably inferred from the pleading. (*Ibid.*) We then determine whether those facts are sufficient, as a matter of law, to state a cause of action under any legal theory. (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 595.)

A “judgment challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.” (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573 (*Sanghera*); *People v. Diaz* (1992) 3 Cal.4th 495, 567 [“As a general rule, we presume that the trial court has properly followed established law.”].) In order for Tucker to demonstrate such error in the trial court’s decision sustaining Chase’s demurrer, Tucker must show that the factual allegations in his second amended complaint are “sufficient to establish every element of [his] cause[s] of action.”

(*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879–880 (*Cantu*), italics omitted.) That Tucker is self-represented does not alter this “most fundamental rule of appellate law.” (*Sanghera, supra*, 139 Cal.App.4th at p. 1573; see *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985 “[M]ere self-representation is not a ground for exceptionally lenient treatment. . . . [T]he rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation.”].)

Tucker has failed to make the requisite showing. He does not address—let alone demonstrate any error in—the trial court’s conclusions that Tucker failed to plead sufficient facts to support any of his causes of action. Tucker argues only that his claims are not time-barred, that he has standing to bring them, and that he brought them against the correct defendant. Thus, even if Tucker were to prevail on all issues he raises on appeal, he has not provided any basis on which we might conclude that the trial court erred in finding the factual allegations insufficient to support his causes of action. In the absence of any suggestion that the court’s fourth independent basis for sustaining Chase’s demurrer reflects reversible error, Tucker has not “overcom[e] all of the legal grounds on which the trial court sustained the demurrer[],” and we must affirm. (*Cantu, supra*, 4 Cal.App.4th at p. 880.)

### **DISPOSITION**

The trial court's order and judgment is affirmed. Defendant and respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.